

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9446 OF 2000

WITH

SPECIAL CIVIL APPLICATION NO.9764 OF 2000

SPECIAL CRI. APPLICATION NO. 627 OF 2000

SPECIAL CIVIL APPLICATION NO.10330 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAJMOTI INDUSTRIES

Versus

STATE OF GUJARAT

Appearance:

In Spl.C.As. No.9446, 9464 and 627 of 2000.

MR V. Shree Nivas for,
MR HARDIK C RAWAL for Petitioner

In Spl.C.A. No.10330/2000

M/s. Rani Advani, for the petitoner.

In all petitions.

MR SN SHELAT ADVOCATE GENERAL for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision:-11/4/2001

COMMON C.A.V. JUDGEMENT

In these petition common issue is involved and hence all these petitions are disposed of by this common judgment.

2. These petitions being Special Civil Applications No.9446 and 9764 of 2000 are connected petitions in which the Control Order of Gujarat Government dated 26-7-2000 prescribing the stock limit on edible oil seeds and edible oils issued under Clause 24 of the Gujarat Essential Articles (Licencing Control and Stock Declaration), Order, 1981 (hereinafter referred to as Order, 1981, is under challenge. In Special Cri. Application No.627/2000 direction has been sought to follow the procedure for taking sample for analysis, prescribed under the provisions of the Food Adulteration Act, 1954 and Rules framed thereunder and for restraining the respondents authorities to take action against the petitioners on the basis of any adverse report of any sample and for a direction to the authorities concerned to supply one file of the report to the petitioner.

3. In Special Civil Application No. 10330/2000 the petitioner sought for a direction to take appropriate action and measures to effectively enforce the order dated 26-7-2000 and to invite the objections and suggestions from all the affected parties including the petitioners before taking any steps to amend, alter or vary the order dated 26-7-2000 and to take appropriate legal action against the traders who are not following the requirements of the order dated 26-7-2000.

4. In Special Civil Applications No.9664/2000 and 9746/2000 it is asserted that the petitioners are dealing in the ground nut oil, cotton seeds oil and other edible oil. They are manufacturing as well as marketing the aforesaid products since 1962.

5. By means of these petitions, the petitioners challenge the inaction on the part of the respondent no. 1 of deleting the edible oil seeds and edible oils from

the list of Essential Articles in positively declaring that the Gujarat Essential Articles (Licencing Control and Stock Declaration) Order, 1981 is not applicable to the edible oil seeds and edible oils. The petitioners also challenged the order dated 26-7-2000 amending the Gujarat Essential Articles (Licencing Control and Stock Declaration) Order, 1981 whereby the stock limits have been specified in respect of edible oil seeds and edible oils. The aforesaid order in respect of the edible oil seeds and edible oil is illegal and void ab-initio as the respondents by the letter dated 23-12-1997 clarified with regard to the amendment made vide Order No. S.O.772(E) dated 10-11-1997, in the Pulses, Edible Oil Seeds and Edible Oils (Storage Control) Order, 1977. On the basis of that amendment Clauses including Clause (3) which is relating to the "Licencing of the Dealers and Producers" of the Order in so far as they relate to edible oil seeds and edible oils are concerned, have been deleted. The petitioners received the letter dated 21-8-2000 from the Central Organization for Oil Industry & Trade.

6. An affidavit-in-reply has been filed by the Joint Secretary, Food, civil Supply and Consumer Affairs Department, wherein it has been stated that the Central Government by the letter dated 24-7-1998 addressed to the Chief Secretary, State of Gujarat making clarification that the State Government, if it finds appropriate can regulate the storage, distribution, etc. of edible oils and edible oil seeds and the State Government would be an appropriate authority to take decision regarding permissible stock limits and turn over period within their area of jurisdiction. The State Government has fixed stock limits of ground nut oil and the oil seeds due to rising of the prices of ground nut oil, vide its order dated 14-8-1998 and the same has not been challenged by the Oil Millers. Therefore, because of sudden price rise in the month of July, 2000, it was necessary to take various actions to check the price rise which includes the issuance of Order by the State Government by the order dated 26-7-2000 as a result of the Central Government's order dated 10-11-1997, the dealers, traders and producers became free from any control which resulted in an abnormal price rise in Essential Commodities especially ground nut oil. The price of ground nut oil was Rs. 31.96 per kg. in October, 1977. Thereafter, there was rise in the price of ground nut oil in December 1997 due to abnormal rise in the price the State Government asked for permission from the Central Government to impose stock limits under Clause 24 of the Order 1981 and the Central Government has given direction to take measures. Accordingly, the

State Government fixed the stock limit by the order dated 14-8-1998 and by imposing stock limit the State Government is in a position to control the price rise, black marketing and hoarding. 73% of the total population of Gujarat is consuming ground oil as reported in Report of Prof. G.O. Parekh, Sardar Patel Institute of Economics & Research, Ahmedabad - January, 1996 and found that the ground nut oil is an important medium of nutrition and thus is an essential commodity for common people which is required to be made available at reasonable price and is required to be monitored by different measures including limit of stock etc. It is incorrect to say that the order dated 26-7-2000 passed by the respondent no. 1 is illegal and void as it does not comply with the Government of India Amendment order dated 10-11-1997 because with prior concurrence with the Central Government the Gujarat Government has published the order namely Gujarat Essential Articles (Licencing Control and Stock Declaration) Order, 1981 with a view to maintain supply of commodities and securing equitable distribution and availability at fair price, the Order 1981 was published. It is also stated that with prior concurrence of the Central Government vide letter dated 27-7-1998 the State Government passed the orders. It is also stated that there is no conflict between the Central Government and local orders because the State Government has passed the order under power conferred by Section 5 of the Essential Commodities Act, 1955 (hereinafter referred to as the Act, 1955) read with the order dated 9-6-1978 with prior concurrence of the Central Government.

7. The respondent no. 2 has also filed an affidavit-in-reply wherein it is stated that the Central Government under the provisions of Section 3 of the Essential Commodities Act, 1955 (hereinafter referred to as the Act, 1955) has been empowered to control production, supply, distribution, etc. of the essential commodities for maintaining or increasing supplies of any essential commodity or securing its distribution and availability at fair prices the Central Government has power by order for regulating or prohibiting the production, supply and distribution thereof and trade commerce therein and Section 5 of the Act, 1955 provides for delegation of powers by the Central Government which could be exercised by it u/s 3 to the State Government or such authority or officer subordinate to the State Government by notified order subject to such conditions, if any. While exercising the powers u/s 3 (1) of the Act, the Central Government issued the order "Pulses, Edible Oilseeds and Edible oil (Storage Control) Order, 1977 with a view to regulate storage and supply and control the prices etc.

The State Government would be the appropriate authority to assess the situation prevailing in their respective states in respect of certain essential commodities including edible oil and oil seeds, the Central Government has notified several orders delegating powers conferred upon it by Section 3 (1) of the Act to the State Government. Such orders have been notified in the years 1972, 1974 and 1978. The State Governments have been duly empowered to take appropriate measures to achieve the purpose mentioned in Section 3 of the Act subject to the condition specified therein including the conditions that no order should be issued in pursuance of the powers delegated if it was inconsistent with any order issued by the Central Government under the Act and the said condition has been deleted from 1978 Order. The State Government is required to obtain prior concurrence of the Central Government before issuance of any order by it. Considering the legal situation in respect of the prices of the edible oils especially groundnut oil in Gujarat, the Minister of Food Supplies and Consumer Affairs, Government of Gujarat, Department of Sugar and Edible Oil, made it clear that due to the unabated rise of prices of edible oil it was absolutely necessary for the State Government to have power to enforce strict control over the oil traders and millers. It is also stated that ever since the withdrawal of stock control order in respect of edible oil seeds and edible oils from Pulses, Edible oilseeds (Storage Control) Order 1977, the oil traders and millers have absolutely free hand in effecting unprecedented price rise and the State Government requested the Minister of the Central government to reintroduce the same at the earliest possible.

8. The Minister of Central Government wrote a letter to drawing the attention of Shri Jashpalsingh to the Central Government's order dated 9-6-1978 whereby the powers conferred under Sub-section. (1) of Sec. 3 of the Essential Commodities Act, 1955, to make orders to provide for matters specified in clauses (a), (b), (c), (d), (e), (f) (h) and (j) on the Central Government have already been delegated to the State Government under Section 5 of the Act, 1955. He also advised that if the State Government finds it proper it could have regulate the storage distribution etc. of edible oils and edible oil seeds. It is also stated in the said letter that the State Government would be appropriate authority to take decision regarding the permissible stock limits etc. within the area of its jurisdiction. Thereafter, the State Government issued the order dated 14-8-1998 in pursuance of Subclause (i) of Clause 24 of the Order,

1981. The Secretary to the Central Government wrote a letter to the Chief Secretary, Government of Gujarat on 24-7-1998 advising to take appropriate measures by issuing orders pursuant to the delegation of powers u/s 5 of the Act in respect of the matters specified in Clauses (a), (b), (c), (d), (e), (f), (h) and (j). Thus, by virtue of the delegation of powers, the State Government u/s 5 of the Act, 1955 is duly empowered to issue the orders in respect of edible oil and edible seeds irrespective of the fact that the Central Government has deleted the edible oil seeds and edible oil from 1977 Order.

9. The contention of the learned counsel of the petitioner of Special Civil Applications No. 9446/2000, 9764/2000 and 627/000 is that the Central Government has been empowered u/s 3 of the Act, 1955 to make order in respect of the essential commodities for regulating or prohibiting the production, supply and distribution thereof, the trade and commerce therein, if it considers necessary or expedient for maintaining or increasing supplies of any essential commodities or for securing equitable distribution and availability at fair price. It can also provide for regulating by licenses, permits, or otherwise the shortage, transport, distribution, disposal, acquisition use or consumption of any essential commodity, for prohibiting the withholding from sale, for requiring any person holding in stock or engaged in production or in business of buying or selling it, for requiring person engaged in the production, supply or distribution of or trade and commerce to maintain and produce for inspection such books, accounts and records relating to their business and furnish such information required under the order, and for any incidental and supplementary matters including entry, search or examination of premises, air craft, vessels, vehicles or any other conveyances and animals and seizures by an authorized persons. Under explanation I to Clause (f) of subsection (2) of Section 3 of the Act, 1955, "edible oil seeds and edible oil" are also to be controlled by this Section. Under the powers given by Section 3 of the Act, 1955, the Central Government issued an order dated 21-9-1977 namely "The Pulses, Edible Oilseeds and Edible Oil (Storage Control) Order, 1977 which provides license to persons carrying on business as a dealer in pulses, or edible oil seed or edible oils subject to the conditions to be imposed under State Control Order prohibiting different stock limits to categories "A" cities, "B" cities" and "C" cities. It is further provided under clause 6 of the Central Government Control Order that the provisions of the State Orders relating to storage of

pulses, edible oil seeds or edible oils shall apply in respect of any matter for which no provision has been specifically made by this order. The Central Government issued notification dated 9-6-1978 delegating the powers u/s 5 of the Essential Commodities Act, 1955 to the State Government to make control orders relating to the food stuffs specified in clauses (a), (b), (c), (d), (e), (f) (h) (i) (ii) and (j) and subsection (2) thereof subject to the conditions laid down therein that such powers shall be exercised by a State Government subject to such direction, if any as may be issued by the Central Government in this behalf and prior concurrence was required in respect of the matters specified in clauses (a), (c) or (f) or in regard to distribution or disposal of food stuffs to places out the State or in regard to regulation of transport of any food stuff under clauses (d) and State was required to authorize any officer in clause (j).

10. Pursuant to the delegation order of the Central Government dated 9-6-1978, the State of Gujarat issued "The Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981" on 20-4-1981. Clause 3 of the Control Order of the Gujarat Government of 1981 requires licensing of dealers and producers and provides that no person shall carry on business as a dealer in edible oil seeds including ground nut in shell, edible oils, including hydrogenated vegetable oils, food grains, pulses, Khandsari and sugar if the stock of such essential articles in his possession at any time exceeds the quantity article specified against it in the table mentioned therein. Clause 4 of the Order 1981 requires licence. Clause 5 requires period of licence and fees chargeable. Clause 15 of the said Order, 1981 says about restriction on possession of essential articles that no person shall either himself or by any person on his behalf store or have in his possession at any time any essential articles mentioned in Schedule-I in excess of the quantity fixed under any Order issued by the Central Government or State Government or under the direction of issued by the State Government under this Order.

11. It is further submitted that the Central Government convened a meeting of the representatives of all the States in 1997 for evaluation of tendency of food stuffs through out country regarding production, supply, equitable distribution and availability of the essential commodities at fair price. After discussion and consideration it was found that the edible oil seeds and edible oils were available at fair prices through out the

country, hence there was no need to impose any control in respect of edible oil seeds and edible oils in any part of the country. The Finance Minister of the Central Government made an announcement in his Budget Speech for 1997-98 that the storage controls on edible oil seeds and edible oils has been lifted in November, 1997. The Central Government by the order dated 10-11-1997 issued a notification for amendment in Pulses, Edible Oil Seeds and Edible Oils (Storage Control) Order 1977 omitting, the words "edible oil seeds and edible oils" wherever these words were occurring in the said Control Order, 1977. The Central Government also issued the directions to the State Government on 13-11-1997 and on 23-12-1997 for removal of not only restrictions on stock limit but also licensing of dealer and other requirement in respect of "edible oil seeds and edible oils. The State of Rajasthan by the order dated 13-4-1998 omitted the words "edible oil seeds" and amended as follows :

"Para 4 :- In subclause (i) of clause 3 of the said order:

- (i) Existing expression "Pulses, Edible Oilseeds and Edible Oils (Storage Control) Amendment Order, 1987" shall be substituted by the expression "Pulses (Storage Control), Order, 1997.
- (ii) Existing expression "or Expelling, Extracting, Manufacturing or refining any edible oil" appearing between the expression "any of the pulses" and "mentioned in Schedule-I" shall be omitted.

Para 5 :- In Schedule-I appended to the said Order, the existing "PART-C (Oil Seeds)" and "PART-D (Edible Oil)" and entries thereto shall be deleted."

12. Pursuant to the directions of the Central Government, the territory of Delhi by the order dated 9-7-1998 amended as under :

"F.9(1)/97/F&S (P&C/(ii)/252 dated 9-3-1998.

O R D E R.

In exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 (10 of 1955) read with the Government of India, Ministry

of Agriculture and Irrigation (Department of Food) Order GSR 800, dated the 9th June, 1978, and with the prior concurrence of the Central Government, the Governor of National Capital Territory of Delhi is pleased to rescind the Delhi Edible Oils (Licensing and Control) Order, 1977, published vide Order No. F.6 (30/76-F&S (P&C) dated 19-4-77, in para IV of the Delhi Gazette Extra Ordinary with immediate effect".

13. In the same manner the State of Madhya Pradesh, also made an amendment in the State Order by the order dated 11-7-1998, omitting the words "edible oil seeds and edible oils". The Government of Gujarat instead of making amendment in the State Order, 1981 published the amending order 1997 of the Central Government in the extra ordinary Gazette on 12-1-1998. The Government of Gujarat also received the direction of the Central Government dated 13-11-1997. The contention of the learned counsel for the petitioners is that once the edible oil seeds and edible oils have been deleted from the Central Storage Order, 1977, the same is also liable to be carried out by the State as per directions issued by the Central Government dated 13-11-1997, as the Central Government has lifted the storage control on the edible oil seeds and edible oils and directed the State Government to carry out such deletion in the State Licensing Control and Stock Declaration Orders. Thus, the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 would stand deleted in respect of the edible oil seeds and edible oils not only restrictions on stock limits but also the licensing of dealership and other requirements stand dispensed with, as the Central Government made delegated powers subject to such directions if any as may be issued by the Central Government in this behalf, by Order dated 9-6-1978. The State of Gujarat is not competent to issue order dated 26-7-2000 and the order dated 24-8-1998 in pursuance of the clause 24 (1) of the Order 1981 specifying storage limits. He also relied on the decision of the learned Single Judge of the Andhra Pradesh High Court in the case of A.P. Oil Millers Association Ltd. Vs. Commissioner of Civil Supplies and Consumer Affairs & Others in Writ Petition No. 3816 of 1998 dated 10-9-1998 where the State of A.P. asserted to have powers on the basis of the Central Government's Order dated 9-6-1998 whereby the powers of the Central Government were delegated to the State Government. The learned Single Judge of the Andhra Pradesh High Court has held as under :

"For the foregoing reasons, I hold that when once

the edible oil seeds and edible oils are deleted from Central Government Storage Order, 1997, by virtue of Pulses, Edible Oil Seeds and Edible oils (Storage Control) Amendment Order, 1977. the same is also liable to be carried out by the State as per directions issued by the Central Government on 13-11-1997. Consequently, the commodities "edible oil seeds and edible oils" wherever occurring in A.P.. Scheduled Commodities, Dealers (Licensing and Distribution) Order, 1982 stands deleted. Thus, not only the restrictions on stock limits, but also the licensing of dealer and all other requirements shall stand dispensed with."

14. The above decision of the learned Single Judge of the Andhra Pradesh High Court was affirmed by the Division Bench of Andhra Pradesh High Court in Writ Appeals No. 1546 of 1998 and other cognate writ appeals on 30-6-1999 and the Apex Court dismissed Special Leave Petition Appeal No. Cc 3461 - 3464/2000 vide order dated 10-7-2000 upholding the decision rendered by the learned Single Judge of the Andhra Pradesh High Court, on 10-7-2000.

15. On the contrary, the learned Advocate General submitted that by the order dated 9-6-1978 of the Central Government, the powers u/s 3(1) of the Essential Commodities Act, have been delegated to the State Governments to make orders to provide for matter specified in clauses (a), (b), (c)) (d), (e) (f), (h) and (j)) subject to certain conditions. Those powers have not been taken back by the Central Government. As such, the State Government has those powers and the Gujarat State Government's Order 1981 is still in operation and under clause 24 (1) of that Order, 1981, the State Government has issued the orders dated 24-8-1998 and 26-7-2000 and those orders are fully within the competence of the State Government. As those orders dated 24-8-1998 and 26-7-2000 have been issued under clause 24 (1) of the Order, 1981, no concurrence of the Central Government is required, as held by the learned Single Judge of this Court in the case of Patel Mafatlal Jethalal Vs. State of Gujarat, reported in 1997 (3) G.L.R. 2212. Even the concurrence of the Central Government will be deemed to have been given under the communication of the Central Government dated 27-7-1998 and 24-7-1998 for taking appropriate decision by the State Government, regarding the permissible stock limits and turn over period within their area of jurisdiction. The learned Advocate General also felt some difficulty as

to whether the communication of the Minister of Central Government and Additional Secretary of Central Government would amount to concurrence by the Central Government or not, then he submitted that in the Affidavit-in-Reply filed on behalf of the Central Government in Special Civil Application No. 9446/2000 the Central Government has given concurrence as stated in paragraphs 5 and 6 of the Affidavit-in-Reply which are reproduced below :

"para 5 : At the outset I say that the Central Government by letter dated 24-7-98 addressed to the Chief Secretary, State of Gujarat and clarified that the State Government, if it finds appropriate, can regulate the storage, distribution, etc. of edible oils and oil seeds. It has been further clarified that in their view the State Government would be appropriate authority to take decision regarding the permissible stock limits and the turn over period within their area of jurisdiction. A copy of the said letter is annexed hereto and marked as Annexure-A. The Central Government has also clarified recently, as under :

"It may be mentioned that vide D.O. No.VIP/356/98-6 dated 19-6-1998, the State Govt. had sought the concurrence of the Central Govt. for issuing the Order. The Central Govt. vide Secretary (Sugar & Edible Oils) of the Ministry of Food and Consumer Affairs D.O. letter No.12/4/96-Exp./65/98 dated 24-07-1998 had drawn the attention of the State Govt. to the Order dated 09-06-1998 of the Central Govt. whereby the powers conferred by subsection (1) of Section 3 of the Essential Commodities Act, 1995 to make orders to provide for matters specified in clauses (a), (b), (c), (d), (e), (f), (h) and (j) have been delegated to the State Governments under Section 5 of the Essential Commodities Act, subject to certain conditions. Therefore, the State Govt. if it finds it appropriate, can regulate the storage, distribution, etc. of edible oils and oilseeds. The intention of the Central Government is that depending upon the local situation, the State Govts. would be the appropriate authority to take a decision regarding the permissible stock limits and turn over period within their areas of jurisdiction.

In further submit that as and when the

State Government fixed stock limit of ground nut oil and oil seeds the resultant effect is the (resting) rising of the prices so far as the price of ground nut oil is concerned. The State Government has fixed stock limit vide its order dtd. 14-8-98, a copy of which is annexed hereto and marked Annexure-II and the same was not challenged by the Oil Millers. Thereafter, because of sudden price rise in the month of June-July, 2000 it was necessary to take various actions to check price-rise which includes the issuance of Order by the State Government dtd. 26-7-2000. The information regarding trend of price in ground nut oil after passing both the orders of stock limit can be visualized in view of the following facts.

Rs. per kg.

1(a) Price of Ground nut
oil prior to Order
dated 14-8-98. 47.52

(b) After passing the order
dated 14-8-1998 36.94

2(a) Price of groundnut oil
prior to order dated
26-7-2000. 48.00

(b) After passing the order
dated 26-7-1998. 45.00

It is further submitted that as a result of the Govt. of India order dated 10-11-97, a copy of which is annexed hereto and marked Annexure-III dealers, traders and producers became free from any control. This resulted in an abnormal price rise in Essential Commodities especially ground nut oil. The price of groundnut oil was Rs.31.96 per kg. in October, 1997. Thereafter, there was rise in Price of Groundnut Oil in December, 1997 - Rs.37.90. The trend of rise in price of Groundnut oil contributed as under :

Month. Price (Rs./kg)

April, 1998. 39.25.

May, 1998. 40.64

It is further submitted that because of abnormal rise in the price the State Government asked for permission to impose stock limits under Clause 24 of Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 and the Central Government has given direction to take necessary measures and accordingly State Govt. fixed Stock Limit by Order dtd. 14-8-98 thereby the prices were controlled. In view of all these facts, this Hon'ble Court would appreciate that by taking necessary measures under the Act more particularly, by imposing stock limit the Government is in position to control the price rise, public at large is benefited. It is pertinent to note that 73% of total population of Gujarat is consuming groundnut oil as stated in the Report of Prof. G.D. Parekh, Sardar Patel Institute of Economics & Research, Ahmedabad January, 1996. A comparative chart showing annual average of whole sale prices and price index numbers with percentage variation over previous year for groundnut oil from year 1962 to 1997 is annexed herewith and marked Annexure-IV and copy of another comparative chart showing sale rate for groundnut oil per quintal from year 1994 to January, 2000, below which is a comparative chart of average retail rates of groundnut oil per kg. from year 1994 to January 2000 is annexed herewith and marked Annexure "V". In view of the above facts and the fact that ground nut oil is an important medium of nutrition and thus is an essential commodity for common people, regular availability at reasonable price is required to be mentioned by different measures including limit of stock etc."

16. Before adverting to discuss the competency and power of the State Government in passing the order and concurrence of Central Government, I would like to see the other contentions raised by the learned Advocate General.

17. The learned Advocate General contended that the State Government was satisfied that it is necessary and expedient for maintaining the supplies and for securing equitable distribution and availability of the essential commodities at fair prices. Hence, the order dated 14-8-1998 was issued in pursuance of subclause (1) of Clause 24 of the Order 1981 prescribing the limit for the traders as well as producers. The concurrence of the Central Government in respect of this order dated 14-8-1998 is not necessary as the Order of 1981 was framed under the delegated powers of the Central

Government and the orders dated 14-8-1998 and 26-7-2000 have been passed under Clause 24 of the Order 1981. This Court in the case of Patel Mafatlal Jethalal Vs. State of Gujarat & Others, reported in 1997 (3) G.L.R. 2213, has held that the order issued under Clause 24 of the Order, 1981 by the authority mentioned therein does not require any prior concurrence of the Central Government as this is not the order made under Section 3 of the Act, 1955. the concurrence is only required to be order framed under Sec. 3 or under the delegated powers as given under Sec. 5 of the act, 1955 by the State Government or the Central Government and not to any order or direction made under the aforesaid provisions. This decision of this Court reported in 1997 (3) G.L.R. 2213 is not applicable in the facts and circumstances of this case inasmuch as subsequently the deletion of the articles "edible seeds oil and edible oils" by the Central Government has been passed in the Central Government's Order 1997 which could not have been at all considered nor it could have been contended before this Court that the State Order, 1981 in respect of edible seeds oil and edible oils is not sustainable in the eye of law. In case, it is found by this Court that the State Order, 1981 in respect of the edible seeds oil and edible oils is illegal and framing of subsequent orders dated 14-8-1998 and 26-7-2000 under Subclause (1) of Clause 24 of the Order, 1981 would automatically stand repealed.

18. The next contention of the learned advocate General is that the State Government has passed the orders on 14-8-1998 and order dated 26-7-2000 made in subclause (1) of Clause 24 of the Order 1981 at the most can be subject to the prior concurrence of the Central Government. In case, this order has been passed by the State Government under subclause (1) of the Clause 24 of the State Order, 1981 and in the larger interest of public and subsequent concurrence is given by the Central Government, the State Orders dated 14-8-1998 & 26-7-2000 made under subclause No. (1) of Clause 24 of the Order 1981 would not be invalid and he relied on the decision of the M/s. Foremost Dairies Ltd. and another Vs. State of Rajasthan and others, reported in AIR 1986 Rajasthan 116, wherein it has been held as under :

"The concurrence of the Central Government in respect of such Export Control Order was merely of formal nature. such concurrence thus, having made even ex post facto, though before the expiry of the total period i.e. September 30, 1984, can certainly fulfil the requirement of

the prior concurrence of the Central Government .
In view of these circumstances, the orders in the instant case cannot be invalidated as ex post facto approval of the Central Government has been obtained."

19. The learned Advocate General has also relied on the decision of the Supreme Court in the case of Life Insurance Corporation of India Vs. Escorts Ltd. and others, reported in AIR 1986 SUPREME COURT 1370, wherein it has been held as under:

"Expression" used general or special permission of the Reserve Bank of India and that expression is not qualified by the words "previous or prior". In case, the permission is obtained later on, the order would not be invalidated. The distinction made by the Parliament between the permission simpliciter and previous permission under several provisions of the Act same cannot be ignored or strained to be explained away. The proper way is to give due weight to the use as well as the omission to use the qualifying words in different provisions of the Act. The Parliament deliberately avoided the qualifying word 'previous' in S.29 (1) so as to invest the Reserve Bank of India with a certain degree of elasticity in the matter of granting permission to nonresident companies to purchase shares in Indian Companies.

20. I have considered the contentions of the learned Advocate General regarding ex facto approval. The contention of the learned Advocate General has no substance inasmuch as the State Government is not empowered to pass an order inconsistent with the order passed by the Central Government, secondly the delegated powers to the State Government by the Central Government were given by the Order dated 9-6-1978 subject to further direction of the Central Government. By the Central Government the letters dated 13-11-1997 and dated 23-12-1997 all the State Governments were required to make amendment in the existing State Government orders to delete the words "edible oil seeds and edible oils" or to make law to give effect of the direction of the Central Government. In the present case, no permission or concurrence has ever been granted by the decision of the Central Government. Thirdly, the State Government is not entitled for acting as a delegate particularly the delegated powers in respect of edible oil seeds and edible oils have already been taken away by the Central Government vide Order 1997. Fourthly, the order of the Gujarat Government is contrary to the order of the

Central Government. The Supreme Court in the case of District Collector, Chittoor and Others Vs. Chittoor District Groundnut Traders' Association, Chittoor and Others, reported in 1989 (2) SCC 58, wherein it has been held as under :

"The directions contained in the impugned Government order are illegal and void as the same have been issued in exercise of and in contravention of the power delegated to the State Government under the notification dated June 9, 1978. The 1982 Order which was framed by the State Government in exercise of delegated powers does not contain any provision placing any restriction on the transport or movement of the edible oil or oil seeds, nor does it provide for imposition of compulsory levy, nor does it fix any price. If the State Government was facing any problem it could have made amendments in the 1982 Order regulating matters specified in clauses (d) and (f) of Section (3) (2) of the Act after obtaining the prior concurrence of the Central Government." Thus, in case, the order passed by the State Government for which no prior concurrence of Central Government is taken is not within the competency of the State Government, the order would be illegal and is not sustainable in the eye of law and that would be null and void even the State Order 1981 is in the larger interest of public. As such, the contention of the learned Advocate General has no substance at all.

21. The contention of the learned Advocate General is that the licensing order is not invalid on the ground that the articles were declared to be essential articles by the Central Government prior to the order of delegation u/s 5 of the Act 1955 and the State Government has made other orders in respect of essential commodities and the delegation of power u/s 5 of the aforesaid Act is of general delegation and by general delegation, in exercise of delegated powers, the State Government with respect to the commodities declared by the Central Government has passed the orders from time to time. Even the subsequent order of delegation to the effect that the commodities declared as essential after the order of delegation does not affect the exercise of powers by the State Government u/s 3 of the Act as held by the the Rajasthan Court in the case of M/s. Foremost Dairies Ltd. and another Vs. State of Rajasthan and others, reported in AIR 1986 Rajasthan, 116. This decision is of the year 1986. While the powers regarding the articles edible oilseeds and edible oils have been deleted in the year 1997. The decision of the Rajasthan High Court is not applicable in the facts of the present case.

Secondly, before issuing the order, the article has been declared by the Central Government as essential commodity, and the powers were delegated by the Central Government to the State Government vide order dated 8-6-1978 under the delegated powers in that respect the State Government of Gujarat has made order, 1981. As such, the contention of the learned Advocate General is not sustainable.

22. Now, reverting to the aspect of competency of the State Government in framing the Orders dated 14-8-1998 and 26-7-2000 after the Order of the Central Government of 1997, we have to examine whether the communications 24-7-1998 and 27-7-1998 amount to policy decision of Central Government giving concurrence to the State Government of Gujarat, first letter dated 16-7-1998 written by Shri Surjit Singh Barnala, Minister of Chemicals & Fertilizers, Food & Consumer Affairs, Government of India, New Delhi to Shri Keshubhai Patel, Chief Minister, Government of Gujarat, the relevant portion of which is reproduced, as under.

"It appears that some unscrupulous traders are indulging in hoarding of these commodities to create artificial scarcity in the market. It is, therefore, imperative that effective and punitive action is taken under the existing provisions of law against speculators, hoarders, black marketeers and profiteers indulging in unfair trade practices.

I, therefore, request you to alert your officers and field functionaries to ensure that such hoarding and manipulative tendencies are curbed. I would suggest that you may take recourse to appropriate action under the Essential Commodities Act, 1955 and the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 without any delay. However, in doing so, it may be ensured that there is no harassment to the traders."

By the aforesaid letter the Minister of the Central Government has said nothing regarding redelegation of powers to the State Government to issue any order. The second letter dated 27-7-1998 sent by Shri Surjit Singh Barnala, Minister of Chemicals & Fertilizers, Food & Consumer Affairs, Government of India, New Delhi to Shri Jashpal Singh, Minister, Food and C.S. & C.A., Government of Gujarat, Gandhinagar in

reply to the letter dated 19-6-1998, wherein it is stated as under :

"In this connection, your attention is drawn to Order dated 9th June, 1978 of Central Government hereby the powers conferred by subsection (1) of Section 3 of Essential Commodities Act, 1955 to make orders to provide for matters specified in classes (a), (b), (c), (d), (e), (f), (h) and (j) have been delegated to the State Governments under Section 5 of the said Essential Commodities Act, subject to certain conditions.

Therefore, the State Government, if it finds it appropriate, can regulate the storage, distribution etc. of edible oils and oilseeds. We are of the view that the State Governments would be the appropriate authority to take decision regarding the permissible stock limits and the turn over period within their area of jurisdiction. In the above circumstances, and considering the widespread public perception that prices of essential commodities have risen sharply in the recent past, you may like to take an emergent decision for use of the aforesaid order in respect of edible oilseeds/edible oils.

We have also taken certain steps to help contain the rise in price of edible oils. Recently, the Basic Customs Duty on import of edible oils on OGL has been reduced by 10%. This step would help to increase the availability of edible oils in the country at reasonable prices. We have also taken a decision to import 1.5 lakh MT of RBD Palmolein for distribution through the PDS during the forthcoming festival season. After these decisions were announced, we have seen a marked fall in the wholesale prices of ground oil, palmolein and mustard oil."

The third letter dated 24-7-1998 written by the Secretary, Government of India, Minister of Food & Consumer Affairs, Department of Sugar & Edible oils, Krishi Bhavan, New Delhi in reply to the letter of Jashpal Singh and in reply to some letter sent by the State Government regarding high rising of the prices if not curbed, cut down to Rs.60/- per kg. during festival sessions and sent to the Chief Secretary, Government of Gujarat and relevant portion thereof is reproduced below:

"In this connection your attention is drawn to

the Order dated 9-6-1978 of the Central Government, whereby the powers conferred by subsection (1) of Section 3 of Essential Commodities Act, 1955 to make orders to provide for matters specified in clauses (a), (b), (c), (d), (e), (f), (h) and (j) have been delegated to the State Government under Section 5 of the Essential Commodities Act, subject to certain conditions.

Therefore, the State Government, if it finds it appropriate, can regulate the storage distribution, etc. of edible oils and oilseeds. We are of the view that the State Governments would be the appropriate authority to take a decision regarding the permissible stock limits and the turn over period within their area of jurisdiction. In the above circumstances, and considering the widespread public perception of essential commodities have risen sharply in the recent past, you may like to take an emergent decision for use of the aforesaid Order in respect of edible oilseeds/edible oils."

23. I am examining the aforesaid extracts of the letters as to whether it amounts a decision of the Central Government or amounts to personal opinion of the Secretary or Minister. On the basis of the above letters dated 27-7-198 and 24-7-1998 sent by the Minister and Secretary of the Central Government to the State Government of Gujarat can it be said that the State Order, 1981 is still in operation under the delegated powers u/s 5 of the Essential Commodities Act, 1955 or can it be said that it was the personal opinion of the Minister and Secretary of the Central Government which can not be accepted as policy decision of the Central Government for making the State Order, 1981 in operation under delegated powers u/s 5 of the Essential Commodities Act, 1955, even after Storage Controls on edible oil seeds and edible oils has been lifted in the year 1997 and the order dated 10-11-1997 has been passed deleting the edible oil seeds and edible oils in the Order, 1997 by the Central Government and central Government issued the directions to the State Governments for compliance. I am of the opinion that the letter dated 27-7-1998 and 24-7-1998 of the Minister and the Secretary of the Central Government are copies of each other and they have expressed their personal opinion by the letters dated 22-7-1998 and 24-7-1998 that the State Government has power under the delegated powers u/s 5 of the Act, 1955 which are not policy decision of the Central Government

on the basis of the following facts. (i) It is clearly mentioned in the aforesaid letter dated 24-7-1998 in the first part thereof "you will recall that pursuant to the announcement made by the then Hon'ble Finance Minister in his Budget Speech for 1997-98, Storage Controls on edible oils and oilseeds were lifted in November, 1997. Thus, the Secretary of the Central Government has informed the Chief Secretary of the Government of Gujarat that the policy has been adopted by the Central Government that the storage control of edible seeds oil and edible oils has been lifted in the year 1997. (2) the Central Government has published the notification on 10-11-1997 deleting the words "edible seeds oil and edible oils" from the Pulses, Edible Oilseeds and Edible Oils (Storage Control) Order 1977. (3) All the State Governments were directed by the Central Government vide Circular dated 23-12-1997 and 13-11-1997 and relevant portion of the Circular dated 23-12-1997 is reproduced below.

"Kindly refer to your D.O. letter dated 10-12-1997 regarding amendment made by the Order NO.S.O. 772 (E) dated 10-11-1997 in the Pulses, Edible Oilseeds and Edible Oils (Storage Control) Order 1997. The Pulses, Edible Oilseeds and Edible Oils (Storage Control) Order, 1997 has been amended vide Order No. SO. 772 (E) dated 10-11-1997 and the corrigendum No. S.O.-859 (E) dated 11-12-1997 (copy enclosed) deleting clauses including clause No.3 which relevant to "Licensing of the Dealers and Producers" of the Order in so far as they relate to Edible Oilseeds and Edible Oils, the State Governments/UTs have been requested vide this office letter of even number dated 13-11-1997 to ensure compliance with the amendment to the said Order 1997."

The Circular dated 13-11-1997 sent to the Secretary, Food & Civil Supplies Department States/UTS is reproduced below:

"I am directed to send herewith a copy of the amendment Order S.O. 772 (E) dated 10-11-1997 (both in Hindi & English) relating to deletion of certain clauses of the Pulses, Edible Oilseeds and Edible Oils (Storage control) Order, 1977 in so far as they relate to edible oilseeds and edible oils, for your information and compliance."

The Government of Gujarat for has admittedly received a letter dated 13-11-1997 as stated above for information and compliance. The Government of Gujarat

renotified the Central Government's order dated 10-11-1997 in the Extra Ordinary Government Gazette dated 12-1-1998, as it is. Meaning of compliance was not to renotification of the Central Government Order (Deletion of Order) 1997. Meaning of compliance is that to make necessary corrections, modification or amendment in the State Government Order relating to storage and control of edible oilseeds and edible oils in the State Orders as the other State Government made amendment in the State Orders deleting the edible oil seeds and edible oils. But on the basis of the personal opinion of the Minister or Secretary of Central Government, the Government of Gujarat erroneously assumed that the delegation of powers under Clauses (a), (b), (c), (d), (e), (f), (h) and (j) to the State Government u/s 5 of the Essential Commodities Act, 1995 in respect of storage and control of edible oilseeds and edible oils, are still in operation. It is also wrongly assumed that delegated powers have not been taken back by the Central Government and hence the State Order 1981 is still in operation in respect of edible oilseeds and edible oils. The State Government has passed the orders dated 14-8-1998 and 26-7-2000 under subclause (1) of Clause 24 of the State Order, 1981.

- (4) Sri Jashpal Singh, Minister of Gujarat Government requested the Minister of Central Government by letter dated 19-6-1998 to reconsider reimposition of Stock Control Order 1977. The Minister of Central Government by the letter dated 27-7-1998 informed the Minister of State Government, Gujarat State, that there would be no scarcity of edible oil as under :

"We have also taken certain steps to help contain the rise in prices of edible oils. Recently, the Basic Custom Duty on import of edible oils on OGL has been reduced by 10%. This step would help to increase the availability of edible oils in the country at reasonable prices. We have also taken a decision to import 1.5 lakh MT of RBD Palmolein for distribution through the PDS during the forth coming festival season. After these decisions were announced we have seen a marked fall in the whole sale prices of ground nut out, palmolein and mustard oil."

And same statement has been repeated by the Secretary of the Central Government by his letter dated 24-7-1998 to the Chief Secretary of Government of Gujarat. the Minister of the

Central Government sent a letter dated 16-7-1996 to the Chief Minister of State Government, as under :

"I, therefore, request you to alert your officers and field functionaries to ensure that such hoarding and manipulative tendencies are curbed. I would suggest you to take recourse to appropriate action under the Essential Commodities Act, 1955 and the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 without any delay. However, while doing so it may be ensured that there is no harassment to the traders"

(5) It has been stated in the affidavit-in-reply filed on behalf of the Central Government that the Minister and Secretary of the Central Government have clarified that the powers of Section 3 have been delegated to the State Governments u/s 5 of the Essential Commodities Act, 1955 and hence the State Government is empowered to take necessary action but it is not stated that the State Orders already issued in respect of edible oil seeds and edible oils after delegation of powers will remain in force and in operation, hence the State Government can take action under these State Orders. Mere clarification by the Minister or Secretary of the Central Government does not empower the State Government to reimpose the powers of State Government which have already been taken away.

(6) As the Central Government has already lifted the Storage Control on edible oil seeds and edible oils there was no restriction on the Central Government to authorize the State Governments to make available orders for such storage and control on edible oil seeds and edible oils. But the Central Government by policy decision has not again authorised the State Governments to reimpose storage and control on edible oil seeds and edible oils.

(7) The Andhra Pradesh State asserted their powers under the delegated powers of the Central Government. The Andhra Pradesh Government continued to enforce Andhra Pradesh Order 1982 which has been negatived by the learned Single Judge of Andhra Pradesh High Court and has been confirmed by the Supreme Court. In the same

manner, the State Order 1981 which stands deleted in respect of edible oil seeds and edible oils. As such, the Order dated 26-7-2000 made under the Order 1981 would be illegal and void.

24. Once the edible oil seeds and edible oils are deleted from the Central Storage Order 1977 by virtue of Pulses, Edible Oil Seeds and Edible oils (Storage Control) Amendment Order, 1997, the State Order 1981 is stands repealed in respect of licensing, control and stock declaration of edible oilseeds and edible oils. The State of Gujarat is not competent to pass the orders including the order dated 26-7-2000 in respect of licencing, control and stock declaration prohibiting the stock limits of edible oilseeds and edible oils for the traders and producers.

25. Thus, the conclusion is that the order dated 26-7-2000 made under subclause (1) of Clause 24 of the State Order 1981 under challenge is without power or without authority and without any competency for the State of Gujarat and hence the impugned order dated 26-7-2000 Annexure-A is quashed and set aside and the words "edible oilseeds and edible oils" wherever occurring in the Gujarat Essential Articles (Licensing Control and Stock Declaration), 1981 Order, 1981 stands deleted hereafter. Accordingly, Special Civil Applications No. 9446 of 2000 and 9764/2000 are allowed and in both these petitions Rule is made absolute to the aforesaid extent, with no order as to costs.

26. So far as Special Cri. Application No. 627 of 2000 is concerned, the respondents required the petitioner to furnish the minutest details so as to provide complete sale and purchase record and details are required on daily basis and hence administration of the petitioner firm was being affected. The respondents have collected 17 samples of groundnut oil from Surat city for analysis at the laboratory of Surat Municipal Corporation and they were sent to the Public Analyst, Government Laboratory, Vadodara for testing. No notice for such intention has been given to the petitioner nor the respondents have given any file of the sample to the petitioner. The Food Inspector and other officers are visiting the factory of the petitioner for checking factory premises and record maintained by the petitioner without complying with the statutory provisions, while taking the samples one or two witness are required to be present and to take signature of those witnesses on the panchanama. By this Special Cri. Application No. 627 of 2000, the petitioner has sought for a direction to the

respondents to follow the procedure for taking sample and for having the same analyzed by the Government Public Analyst provided under the provisions of the law. The petitioner has also sought for prohibitory writ restraining the respondents authorities from initiating any action against the petitioner on the basis of adverse analysis report of any sample of the petitioner's product taken from the factory premises of the petitioner and also for a direction to give one file of the sample to the petitioner firm. In this connection, it is significant to note that the Food Inspector or any authorized officer/person under the provisions of the Prevention of Food Adulteration Act 1954 can take sample for analysis if he reasonably believes or appears to him that some article is adulterated one after giving notice for taking sample. It is the statutory function or duty of the authority concerned and hence this Court cannot direct the State Government or authorities concerned not to take any sample of any article for analysis though it can be said that it is expected that if the Food Inspector or any authorized officer while taking sample to follow the procedure prescribed under the Food Adulteration Act, 1954 as well as the Rules framed therein and the Food Inspector or any authorized officer/person is required to have witnesses at the time when the sample is taken and the panchanama is prepared. It is also required under the provisions of the aforesaid Food Adulteration Act, 1954 that the authorized officer/person or Food Inspector will provide notice of intention and receipt of full details of the sample to the person from whose factory/premises sample is taken. No doubt, no authorized officer/person or Food Inspector can inspect the record with regard to sale and purchase pertaining to the edible oilseeds and edible oils as no licence is required to maintain regarding sale and purchase of edible oilseeds and edible oils in order to show stock limits thereof. Accordingly, Special Cri. Application No. 627/2000 is disposed of with a direction to the respondents authorities to comply with the statutory provisions of the Food Adulteration Act, 1954 and Rules made thereunder. Rule is discharged with no order as to costs. Interim relief granted earlier stands vacated.

27. So far as Special Civil Application No. 10330 of 2000 filed by Consumer Education Federation and Research Society Suraksha Sankool, Ahmedabad, is concerned, the petitioner has sought for a direction to the respondent no. 1 - State Government to take appropriate actions and measures to effectively enforce the Order dated 26-7-2000 inviting the objections and suggestions from all affected

parties including the petitioner before taking any steps of measures for making amendment, alteration or vary in the contents of the impugned order dated 26-7-2000 and further direction to the respondent no.1 to maintain record and take appropriate legal actions against the traders who do not comply with the requirements of the impugned order dated 26-7-2000. As it has been held above that the impugned order dated 26-7-2000 passed by the State Government is illegal and without any authority of law or competency, this petition does not survive and accordingly this petition being Special Civil Application No. 10330 of 2000 stands dismissed. Rule is discharged with no order as to costs.

28.33. Accordingly, Special Civil Applications No. 9446/2000 and 9764/2000 are allowed and in both these petitions rule is made absolute to the aforesaid with no order as to costs. Interim order if any in any of the petitions, stands vacated.

-0-0-0-0-

/JVSatwara/

After pronouncement of the aforesaid judgment, learned Advocate General requested this Court to stay the operation and implementation of this judgment for a period of four weeks to approach the higher forum. I do not find any good ground or reason to grant the request made by the learned Advocate General and hence his request is refused.

Date:-11-4-2001. (Kundan Singh, J.)